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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11 SONOS, INC.,

12 Plaintiff,

13 vs.

14 GOOGLE LLC,

15 Defendant.

Case No. 3:21-cv-07559-WHA

Related to Case No. 3:20-cv-06754-WHA

**GOOGLE LLC'S RESPONSE TO
SONOS, INC.'S MOTION FOR LEAVE
TO FILE A THIRD AMENDED
COMPLAINT**

Date: May 12, 2022

Time: 8:00 a.m.

Location: Courtroom 12, 19th Floor

Judge: Hon. William Alsup

Second Amended Complaint Filed: February
23, 2021

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1 **I. INTRODUCTION**

2 As explained in the Motion to Stay that Google is filing concurrently herewith, Google
3 respectfully requests that the Court postpone ruling on Sonos’s Motion for Leave to File a Third
4 Amended Complaint (Dkt. 159, “Motion to Amend”) until the United States Court of Appeals for
5 the Federal Circuit (“Federal Circuit”) rules on the parties’ petitions for permission to appeal
6 pursuant to 28 U.S.C. § 1292(b). To do otherwise would risk inconsistent rulings and duplicative
7 litigation.

8 If the Court is inclined to rule on Sonos’s Motion to Amend before the Federal Circuit rules
9 on the parties’ petitions for interlocutory appeal, the Court should deny Sonos’s Motion to Amend
10 because the *Foman* factors weigh against amendment. Sonos’s proposed amendments are either
11 facially futile or have the potential to become futile. Two of Sonos’s theories of knowledge for
12 willful and indirect infringement were either already rejected by the Court or are facially deficient,
13 and the third theory could be reversed on appeal. Moreover, Sonos’s decision to seek amendments
14 based on allegations that the Court has previously rejected or that Sonos has known about for
15 months, if not years—and Sonos’s decision to pursue those amendments just days after filing a
16 petition for interlocutory appeal, and without meeting and conferring with Google—evinces undue
17 delay, bad faith, and dilatory motive. As explained in more detail in Google’s Motion to Stay,
18 Sonos’s proposed amendments also present a risk of undue prejudice to Google as they increase the
19 likelihood of duplicative and unnecessary litigation.

20 **II. STATEMENT OF THE ISSUES TO BE DECIDED**

21 1. Whether the Court should defer ruling on Sonos’s Motion to Amend until the Federal
22 Circuit rules on Sonos’s and Google’s petitions for permission to appeal the Court’s Order granting
23 Google’s motion to dismiss without prejudice.

24 2. Whether the Court should deny Sonos’s Motion to Amend.

25 **III. STATEMENT OF RELEVANT FACTS**

26 On September 28, 2020, Sonos sent Google a draft complaint alleging infringement of five
27 patents, namely U.S. Patent Nos. 9,967,615 (“the ’615 patent”); 10,779,033 (“the ’033 patent”);
28

9,344,206 (“the ’206 patent”); 10,469,966 (“the ’966 patent”); and 9,219,460 (“the ’460 patent”), which it planned to file in the Western District of Texas the next day. Dkts. 1 ¶¶ 83, 95, 107, 120, 133; 156 at 1. That night, Google filed a declaratory judgment complaint in the Northern District of California seeking a declaratory judgment of non-infringement of the same patents. *Google LLC, v. Sonos, Inc.*, Case No. 3:20-cv-06754-WHA (N.D. Cal. Sept. 28, 2020) (“DJ Action”), Dkt. 1. The next morning, Sonos filed the instant action in the Western District of Texas. Dkt. 1. Sonos subsequently amended its complaint to add a claim of infringement for U.S. Patent No. 10,848,885 (“the ’885 patent”) on February 17, 2021. Dkt. 49.

Sonos filed the operative second amended complaint on February 23, 2021, asserting claims for direct, indirect, and willful infringement of the ’615, ’033, ’996, ’885, and ’206 patents.¹ Dkt. 51 (“SAC”). To establish the knowledge element of its willful and indirect infringement claims for the ’033, ’966, and ’885 patents, the SAC contends that Google had knowledge of the ’033 and ’966 patents when Sonos sent Google a draft of its original complaint on September 28, 2020, and of the ’885 patent when Sonos provided Google with a draft of its first amended complaint on January 8, 2021. *Id.* ¶¶ 92-95 (’033 patent); ¶¶ 117-20 (’966 patent); ¶¶ 130-33 (’885 patent). The SAC also claims that Google had notice of the ’033, ’996, and ’885 patents as a result of the parties’ previous patent disputes and licensing discussions regarding other non-asserted patents in Sonos’s patent portfolio. *See, e.g., id.* ¶¶ 20, 22, 26.

On March 9, 2021, Google moved to dismiss Sonos’s willful and indirect infringement claims for the ’033, ’966, and ’885 patents. Dkt. 55. Since the motion was still pending when the case was transferred from the Western District of Texas to this Court, this Court ordered Google to re-file the motion to conform with the Local Rules for the Northern District of California on October 7, 2021. DJ Action, Dkt. 73 at 18:2-3, 18:13-14. After the Court granted Google’s précis requesting permission to re-file the motion to dismiss on December 30, 2021 (Dkt. 133), Google filed its motion to dismiss on January 10, 2022. Dkt. 138.

¹ On February 4, 2022, the parties stipulated to dismissal of claims and counterclaims regarding the ’206 patent. Dkt. 151.

1 On March 16, 2022, the Court granted Google’s motion to dismiss without prejudice. Dkt.
2 156 (“Order”). Recognizing that the standard for pleading willful infringement “is a recurring issue
3 in patent litigation,” the Court attempted to set forth the “proper pleading standard.” *Id.* at 2-3.
4 Although “[n]o post-*Halo* appellate authority addresses any pleading requirements for enhanced
5 damages, or for that matter, willful infringement,” the Court held that “knowledge of the patent and
6 knowledge of infringement must be pled with plausibility.” *Id.* at 4. It then emphasized that “[m]ere
7 knowledge of a ‘patent family’ or the plaintiff’s ‘patent portfolio’ is not enough” to establish a
8 specific intent to infringe. *Id.* The Court also “join[ed] those district courts that do not generally
9 allow the complaint to serve as notice.” *Id.* at 8. However, the Court noted that a “different
10 calculus” applies “when the controversy is initiated by the accused infringer by way of a declaratory
11 relief action” and held that “the patent owner, by way of a counterclaim, should be allowed to plead
12 the infringer’s conceded knowledge of the patents and that the infringer has had sufficient time to
13 analyze the accused product vis-à-vis those patents.” *Id.*

14 Applying this standard, the Court found that “Sonos has not plausibly alleged Google had
15 the requisite knowledge” to support its willful infringement claims for the ’033, ’966, and ’885
16 patents. *Id.* at 9. First, the Court rejected Sonos’s claim that the courtesy copies of the original
17 complaint and first amended complaint established Google’s knowledge of the ’033, ’966, and ’885
18 patents. *Id.* Second, it found Sonos’s allegations of the parties’ previous patent disputes and
19 licensing discussions insufficient to establish knowledge of the patents at issue. *Id.* at 9-10.
20 However, the Court permitted Sonos to amend its complaint to plead willful infringement based on
21 Google’s declaratory judgment complaint. *Id.* at 10.

22 The Court also dismissed Sonos’s claims for indirect infringement without prejudice on the
23 same ground. *Id.* at 10-12. The Court noted that “[l]ike willful infringement, both forms of indirect
24 infringement—induced and contributory infringement—require knowledge of the patent and
25 knowledge of infringement.” *Id.* at 10. Accordingly, the Court concluded that “[e]verything
26 discussed above for willfulness applies here.” *Id.* at 11. In addition, for contributory infringement,
27 the Court held that Sonos did not adequately plead the requisite lack of substantial noninfringing
28 uses. *Id.* at 11-12.

1 Recognizing that “reasonable minds may differ” on the pleading standard for “pleading
 2 willfulness and indirect infringement (on the knowledge point, not on the issue of substantial
 3 noninfringing uses), and recognizing the vast amount of resources being consumed in the district
 4 courts over such pleading issues,” the Court certified the issue for interlocutory appeal under §
 5 1292(b). *Id.* at 13. Sonos petitioned the Federal Circuit for permission to appeal the Court’s Order
 6 on March 28, 2022, seeking review of the pleading standard for post-filing knowledge for both
 7 willful and indirect infringement. *See Sonos, Inc. v. Google LLC*, No. 2022-134 (Fed. Cir. Mar. 28,
 8 2022). On April 7, 2022, Google filed a cross-petition for permission to appeal the Court’s holding
 9 that a patentee can adequately plead willfulness and the knowledge element of indirect infringement
 10 merely by alleging that accused infringer filed a declaratory judgment complaint alleging non-
 11 infringement of the patents at issue. *See Sonos, Inc. v. Google LLC*, No. 2022-144 (Fed. Cir. Apr.
 12 7, 2022) (“Cross-Petition”).

13 On March 30, 2022, Sonos moved for leave to file a third amended complaint. *See Motion*
 14 *to Amend*. Sonos’s proposed third amended complaint (“TAC”) adds the following allegations
 15 regarding Google’s knowledge of the ’033, ’966, and ’885 patents: (1) Google’s declaratory
 16 judgment complaint supposedly demonstrates that Google knew of the ’966, ’033, and ’885 patents
 17 prior to Sonos bringing each respective claim of infringement,² and (2) Google supposedly “should
 18 have known about the ’966, ’033, and ’885 Patents and Google’s infringement thereof based on the
 19 parties’ multi-jurisdictional patent dispute as well as a five-year history where Sonos had repeatedly
 20 informed Google of the breadth and depth of Sonos’s patent portfolio and its applicability to the
 21 accused Google products, including for patents in the same family as the asserted patents.” *Id.* at
 22 12-13. The TAC also provides additional allegations on the issues of specific intent and lack of
 23 substantial noninfringing uses and adds claims pursuant to 35 U.S.C. § 271(f). *See Dkt. 159-9 ¶¶*
 24 *103-07, 140-41, 173-76, 207-10 (specific intent); 109-13, 143-47, 179-82, 212-15 (substantial*
 25 *noninfringing uses); ¶¶ 114-26, 148-60, 183-93, 216-25 (§ 271(f)).*

26 _____
 27 ² Although Google’s original declaratory judgment complaint did not seek a declaratory judgment
 28 of non-infringement of the ’885 patent, Sonos appears to contend that the original declaratory
 judgment complaint nevertheless establishes that Google knew of the patent before Sonos filed its
 claim for infringement of the ’885 patent. *See Dkt. 159 at 12-13; DJ Action, Dkt. 1.*

On April 13, 2022, Google moved to stay all issues relating to Sonos’s Motion to Amend pending interlocutory appeal. Dkt. 166 (“Motion to Stay”). As explained in more detail in the Motion to Stay, a tailored stay would facilitate the efficient resolution of this case by allowing this Court to benefit from the Federal Circuit’s guidance and avoiding duplicative litigation without delaying the progress of the case. *Id.*

IV. LEGAL STANDARD

Federal Rule of Civil Procedure 15(a) provides that a court “should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a). In the Ninth Circuit, district courts may deny leave to amend due to “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.” *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).³ “The touchstone of the evaluation is prejudice to the opposing party.” *People.ai, Inc. v. Clari Inc.*, No. C 21-06314 WHA, 2022 WL 228306, at *1 (N.D. Cal. Jan. 26, 2022). “A district court’s discretion to deny leave to amend is ‘particularly broad’ where the plaintiff has previously amended.” *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013).

V. ARGUMENT

A. The Court Should Defer Ruling on Sonos’s Motion to Amend Until The Federal Circuit Decides Sonos’s And Google’s Petitions For Permission To Appeal.

As explained in Google’s concurrently-filed Motion to Stay, Google respectfully requests that the Court postpone ruling on Sonos’s Motion to Amend until after the Federal Circuit resolves the parties’ petitions for interlocutory appeal. As Google explained in its Motion to Stay, ruling on Sonos’s Motion to Amend without the Federal Circuit’s guidance risks inconsistent rulings and duplicative litigation. *See* Motion to Stay at 9-11. If the Federal Circuit grants interlocutory review

³ Ninth Circuit law applies to a motion for leave to amend a pleading because it “raises an issue not unique to patent law.” *Chicago Bd. Options Exch., Inc. v. Int’l Sec. Exch., LLC*, 677 F.3d 1361, 1374 (Fed. Cir. 2012).

1 after the Court rules on Sonos’s Motion to Amend, the Federal Circuit could modify the Court’s
 2 pleading standards for willful and indirect infringement and require the parties to re-litigate the
 3 sufficiency of Sonos’s pleadings. *Id.* at 10. And since resolution of Google’s cross-petition could
 4 result in the dismissal of Sonos’s willful and indirect infringement claims for the ’033, ’966, and
 5 ’885 patents with prejudice, it would be more efficient to defer deciding Sonos’s Motion to Amend
 6 until after the Federal Circuit clarifies the proper pleading standard to employ in assessing the merits
 7 of the motion. *Id.* at 11.

8 Furthermore, waiting to resolve the sufficiency of Sonos’s revised willful and indirect
 9 infringement claims until after the Federal Circuit rules on Sonos’s and Google’s petitions for
 10 interlocutory appeal will not significantly delay the resolution of the case. *Id.* at 11-12. The parties
 11 will continue to litigate Sonos’s direct infringement claims and prepare for the patent showdown.
 12 *Id.* Discovery also would not be delayed because (1) the parties are already diligently conducting
 13 discovery in advance of the patent showdown and, (2) the Court’s Order specifies that “even under
 14 the strictest of pleading standards, and even if all its willfulness claims were struck, Sonos would
 15 be entitled to pursue in discovery issues concerning Google’s pre-suit knowledge of the specific
 16 patents-in-suit and of infringement.” Order at 10. Accordingly, a deferred ruling on Sonos’s Motion
 17 to Amend will facilitate the efficient resolution of this case and preserve judicial and party resources.

18 If the Court is inclined to rule on Sonos’s Motion to Amend before the Federal Circuit rules
 19 on the parties’ petitions for interlocutory appeal, the Court should deny Sonos’s Motion because the
 20 *Foman* factors are either neutral⁴ or weigh against amendment.

21 **B. *Foman* Factor 4: Sonos’s Revised Claims Are Either Futile On Their Face Or**
 22 **May Become Futile.**

23 “Amendment is futile if the complaint would fail to state a claim for relief.” *People.ai*, 2022
 24 WL 228306, at *2. “As in a motion to dismiss, a complaint must allege facts sufficient to state a
 25 facially plausible claim for relief. That means the factual allegations permit a reasonable inference,
 26

27 ⁴ *Foman* factor two (“repeated failure to cure deficiencies by amendments previously allowed”) is
 28 neutral given that this is the first time Sonos has moved for leave to amend in response to an order
 on a motion to dismiss.

1 not just speculation, that defendants are liable for the misconduct alleged.” *Fluidigm Corp. v.*
2 *IONpath, Inc.*, No. C 19-05639 WHA, 2020 WL 1433178, at *1 (N.D. Cal. Mar. 24, 2020). Futility
3 “alone can justify denial of a motion for leave to amend.” *Johnson v. Buckley*, 356 F.3d 1067, 1077
4 (9th Cir. 2004). Here, two of Sonos’s theories of knowledge for its willful and indirect infringement
5 claims are futile because they were already rejected by the Court or are facially deficient. Sonos’s
6 third theory could similarly become futile if the Federal Circuit grants Google’s cross-petition for
7 interlocutory review and reverses the Court’s finding that a declaratory judgment complaint for non-
8 infringement can create a basis for alleging the knowledge requirement of willful and indirect
9 infringement.

10 Sonos’s first theory of willful and indirect infringement—that Google had knowledge of the
11 ’966, ’033, and ’885 patents as a result of the parties’ previous patent disputes and licensing
12 discussions—has already been rejected by this Court. Sonos’s proposed TAC seeks to add
13 allegations that Google “should have known about the ’966, ’033, and ’885 Patents and Google’s
14 infringement thereof based on the parties’ multi-jurisdictional patent dispute as well as a five-year
15 history where Sonos had repeatedly informed Google of the breadth and depth of Sonos’s patent
16 portfolio and its applicability to the accused Google products, including for patents in the same
17 family as the asserted patents.” Motion to Amend at 13 (citing TAC ¶¶ 17-31, 37-40). But the
18 Court rejected this exact theory of pre-suit knowledge in its Order: “Mere knowledge of a ‘patent
19 family’ or the plaintiff’s ‘patent portfolio’ is not enough” to plead the requisite knowledge for willful
20 and indirect infringement. Order at 4. Because this theory of liability was already dismissed, it is
21 clearly futile. *See People.ai*, 2022 WL 228306, at *4 (finding amendment “futile” because “the
22 additional factual allegations that [the plaintiff] inserted into its proposed second amended
23 complaint do not address the deficiencies pointed out in the order granting [the defendant] judgment
24 on the pleadings”); *Fluidigm Corp.*, 2020 WL 1433178, at *3 (“[T]he Court is unsure why our patent
25 owner again included several theories of liability in its proposed second amended complaint that
26 were already dismissed. For example, the January 24 order made clear that mere knowledge of a
27 prior patent conveys no knowledge whatsoever of later patents in the same family. Yet this theory
28 remains in the proposed complaint.”).

1 Sonos’s second theory—that Google’s declaratory judgment complaint establishes
 2 knowledge of the ’885 patent—is facially deficient. Google’s original declaratory judgment
 3 complaint did not seek a declaratory judgment of non-infringement of the ’885 patent. DJ Action,
 4 Dkt. 1. In fact, the ’885 patent did not even issue until November 24, 2020, two months *after* Google
 5 filed its original declaratory judgment complaint. *See* Dkt. 51-45 at 1. Thus, there is no plausible
 6 way that Google’s declaratory judgment complaint could have established knowledge of the ’885
 7 patent.

8 Sonos’s third theory—that Google’s declaratory judgment complaint of non-infringement
 9 establishes the requisite knowledge for willful and indirect infringement—could become futile.
 10 While the Court previously suggested that a complaint seeking a declaratory judgment of non-
 11 infringement could establish knowledge for both willful and indirect infringement, Google
 12 respectfully disagrees. A declaratory judgment complaint demonstrates a good-faith belief in non-
 13 infringement, not knowledge of infringement. *See* Cross-Petition at 26-27. Permitting declaratory
 14 judgment complaints to establish willful and indirect infringement would also contravene the
 15 Declaratory Judgment Act and patent policy by punishing parties for seeking a determination of
 16 their rights. *Id.* 27-28. Accordingly, Google raised the issue with the Federal Circuit in its Cross-
 17 Petition for interlocutory appeal. *See id.* If the Federal Circuit grants Google’s Cross-Petition, it
 18 could reverse the Court’s holding that a declaratory judgment complaint of non-infringement
 19 demonstrates the requisite knowledge for willful and indirect infringement. Motion to Stay at 11.
 20 And in that circumstance, Sonos’s additional allegations of lack of substantial non-infringing use
 21 could not even save its indirect infringement claims. If the Federal Circuit grants Google’s Cross-
 22 Petition and reverses the Court’s holding, Sonos’s willful and indirect infringement claims would
 23 have to be dismissed with prejudice.

24 **C. Foman Factor 1: Sonos’s Motion Evinces Bad Faith and Dilatory Motive**

25 Sonos contends that “there is no evidence of undue delay, bad faith, or dilatory motive”
 26 because it filed its Motion to Amend fourteen days after the Court granted Google’s motion to
 27 dismiss and its proposed amended complaint allegedly “responds to the Court’s pleading ‘ground
 28 rules.’” Motion to Amend at 8-9. This mischaracterizes the facts.

1 First, as discussed above, Sonos’s proposed amendments include allegations regarding the
2 parties’ previous licensing discussions about unasserted patents that the Court has already explicitly
3 rejected. *Supra* Section V.B. Because Sonos is merely trying to renew allegations that the Court
4 has previously rejected, Sonos’s amendment evinces bad faith. *See Quidel Corp. v. Siemens Med.*
5 *Sols. USA, Inc.*, No. 16-CV-3059-BTM-AGS, 2019 WL 1409854, at *3 (S.D. Cal. Mar. 27, 2019)
6 (“Bad faith exists where the proposed amendment suggests that the movant is ‘merely . . . seeking
7 to prolong the litigation by adding new but baseless legal theories.’”) (quoting *Griggs v. Pace Am.*
8 *Grp., Inc.*, 170 F.3d 877, 881 (9th Cir. 1999)).

9 Second, Sonos’s proposed TAC seeks to add allegations and theories that Sonos has been
10 aware of for months, if not years. Sonos knew it intended to pursue claims under § 271(f) at least
11 as early as September 10, 2021 when it served its Final Infringement Contentions in the Western
12 District of Texas and included theories pursuant to § 271(f). *See* Ex. 1; TAC ¶¶ 114-26, 148-60,
13 183-93, 216-25. Sonos also knew of the additional licensing discussions between Sonos and Google
14 that it seeks to add to the TAC at least as early as December 16, 2021, when it identified those exact
15 licensing discussions in its response to the Court’s request for information regarding Google’s précis
16 request. *See* Dkt. 129; TAC ¶¶ 20-27. Likewise, Sonos could have asserted that Google’s
17 declaratory judgment complaint established pre-suit notice of the ’033, ’966, and ’885 patents in
18 both its first amended and second amended complaints. *See* TAC ¶¶ 55-63. Sonos was served with
19 the declaratory judgment complaint on September 30, 2020, and subsequently amended its
20 complaint on February 17, 2021 and February 23, 2021. Dkts. 49, 51; DJ Action, Dkt. 8. This delay
21 is similarly evidence of bad faith. *Align Tech., Inc. v. Strauss Diamond Instruments, Inc.*, No. 18-
22 CV-06663-TSH, 2019 WL 861422, at *2 (N.D. Cal. Feb. 22, 2019) (“Bad faith may be shown when
23 a party seeks to amend late in the litigation process with claims which were, or should have been,
24 apparent early.”); *see also Edwards Lifesciences LLC v. Cook Inc.*, No. C 03-03817JSW, 2008 WL
25 913328, at *2 (N.D. Cal. Apr. 2, 2008) (“Courts do not look favorably upon the assertion of new
26 legal theories, when the factual basis of those legal theories was known to the party for a significant
27 amount of time prior to filing a motion for leave to amend.”).

1 Third, Sonos filed its Motion to Amend after it filed its petition for permission to appeal the
 2 Court's Order—and without attempting to confer with Google about the motion. By filing its
 3 Motion to Amend days after its petition for appeal, Sonos only increased the chance of duplicative
 4 and unnecessary litigation. It is entirely possible that the parties could fully brief this motion, the
 5 Court could rule on it, the Federal Circuit could modify the pleading standard the Court used to rule
 6 on the motion, and the parties would have to re-litigate the motion according to a different pleading
 7 standard. If Sonos had informed Google of its desire to amend its complaint, the parties could have
 8 worked together to determine an efficient schedule for Sonos to amend its complaint in light of
 9 Sonos's petition for interlocutory appeal.

10 When viewed individually and in isolation, Sonos's plain defiance of the Court's Order,
 11 attempt to add allegations it has known about for months, and disregard for resolving issues
 12 without court intervention evidence "undue delay, bad faith [and] dilatory motive."

13 **D. Foman Factor 3: Allowing Amendment Would Unduly Prejudice Google.**

14 Both the timing of Sonos's Motion to Amend and the substance of Sonos's proposed TAC
 15 present a risk of undue prejudice to Google. Since Sonos filed its Motion to Amend while its petition
 16 for permission to appeal the Court's Order was pending, it is possible that the parties will fully brief
 17 the motion only to have the Court lose jurisdiction to rule on it, or have the Federal Circuit
 18 subsequently modify the controlling pleading standards for willful and indirect infringement.
 19 Motion to Stay at 10. If the Federal Circuit were to adopt different pleading standards for willful
 20 and indirect infringement than this Court, it could require the parties to re-litigate the adequacy of
 21 Sonos's pleadings. And if the Federal Circuit specifically reversed this Court's holding that a
 22 declaratory judgment complaint of non-infringement can establish the knowledge element of willful
 23 and indirect infringement for pleading purposes, Sonos's willful and indirect infringement claims
 24 for the '033, '966, and '885 patents would have to be dismissed with prejudice, rendering the instant
 25 Motion to Amend superfluous. Such possibilities would unduly prejudice Google by imposing
 26 unnecessary further expense, particularly after Google has already filed two versions of its original
 27 motion to dismiss, one in the Western District of Texas and one in the Northern District of
 28 California. *See, e.g., People.ai*, 2022 WL 228306, at *4 (finding undue prejudice to defendant where

1 defendant “already exerted significant time and expense in drafting two Rule 12 motions” and
2 “[g]ranting leave to amend would impose further unnecessary expense on [defendant]”).

3 Furthermore, as discussed *supra* Section V.B, Sonos’s proposed TAC seeks to add
4 allegations that the Court already rejected as insufficient to adequately plead the requisite knowledge
5 for willful and indirect infringement. Accordingly, granting Sonos’s Motion to Amend would
6 prejudice Google by requiring that it to move to strike or dismiss allegations the Court already found
7 deficient. *See id.* (concluding that “[p]rejudice, the lynchpin of the analysis for a leave to amend,
8 favors [the defendant]” because the plaintiff’s “revisions do not address the substantive issues upon
9 which the Rule 12(c) order found the asserted claims of the patents-in-suit patent ineligible”).

10 **VI. CONCLUSION**

11 For the foregoing reasons, Google requests that the Court defer ruling on Sonos’s Motion to
12 Amend until the Federal Circuit rules on the parties’ petitions for interlocutory appeal. In the
13 alternative, Google requests that the Court deny Sonos’s Motion to Amend.

14
15 DATED: April 13, 2022

QUINN EMANUEL URQUHART &
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18 By /s/ Charles K. Verhoeven

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on April 13, 2022, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: April 13, 2022

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By:

/s/ Charles K. Verhoeven

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